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Letter dated 21 April 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 13 November 2002 (S/2002/1248).

The Counter-Terrorism Committee has received the attached third report from India submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 28 March 2003 from the Permanent Representative of India to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

In response to your letter dated 30 October 2002, I have the honour to transmit herewith, to the Counter-Terrorism Committee, the Government of India's third report (see enclosure).

While we note that the Committee had requested a response to the questions and comments raised in your letter under reference by 30 January 2003, our response was delayed owing to the effort to present as comprehensively as possible the required information. While apologizing for this delay, we do hope the Committee would understand the importance the Government of India attaches to the work of the Counter-Terrorism Committee.

(*Signed*) V. K. **Nambiar**

Enclosure

RESPONSES TO CTC QUESTIONS*

Que. 1.3 According to Section III of the supplementary report, efforts "are underway to strengthen the Foreign Exchange Management Act to prevent informal banking activities like Hawala". According to Section II of the same report, this Act (FEMA) as well as the Foreign Exchange Regulation Act (FERA) "prohibit receipt and distribution of payments in India without the permission of the RBI 'Reserve Bank of India' as per instructions of persons residing outside India". In the context of paragraph 1 of the Resolution, please elaborate on how India prevents or proposes to prevent the abuse of the hawala system by persons residing in India, both regarding informal banking activities that are undertaken upon instruction by persons residing in India and resulting in the transfer of money or financial means to persons residing either within or outside India.

Ans. Hawala transactions are illegal because permission from the Reserve Bank of India (the Central Monetary Authority of the country) is required for most types of foreign exchange transactions. There are some exceptions permitted under the law, but the transfer of money to and from the country through Hawala [i.e. non-banking channels] is in contravention of the Foreign Exchange Management Act (FEMA).

Hawala is a criminal offence under Sections 8(i) and 9(i)(b)and (d) of the Foreign Exchange Regulation Act (FERA) 1973. Penalties of up to five times the amount in contravention can be imposed for breach of these legal provisions. In addition, the offender can be prosecuted under Sec.56 of FERA in which the punishment prescribed is imprisonment of up to seven years with fine in cases where the amount involved exceeds Rupees 100,000. The Foreign Exchange Management Act [FEMA] enacted recently to replace FERA imposes civil liability for the offender for the contravention of its sections 3, 4, 5, 6 and 8. FEMA applies to all branches, offices and agencies outside India owned or controlled by a person resident in India and to any contravention committed outside India by any person to whom FEMA is applicable. Article 13 (2) of FEMA confers on the competent authority the power to direct the confiscation of any currency, security or any other money or property in respect of which any contravention has occurred.

Several authorities in India such as the Enforcement Directorate, the Police, the Customs, the Income Tax, and the state police organisations monitor activities relating to Hawala transactions. The Enforcement Directorate which is responsible for revenue intelligence, the Customs and the Police have adequate powers to initiate action against anybody indulging in illegal foreign exchange transactions, including Hawala. Several hundreds of cases of this nature have been caught and dealt with by the relevant Indian authorities.

In addition to the above, the Conservation of Foreign Exchange and Protection of Smuggling Activities Act, 1974 (COFEPOSA) contains stringent provisions enabling authorities to detain offenders for a period extending up to one year for indulging in illegal foreign exchange activities, including Hawala. A copy of the Act is enclosed for the information of the CTC. This covers all types of informal activities not under the purview of the Reserve Bank of India's regulations.

Que. 1.4 According to Section III of the supplementary report, India can implement orders of attachment or forfeiture of property upon request of foreign State on the basis of Sections 105, 105A to 105L, and 166A and 166B of the Code of Criminal Procedure. In the answer given in sub-paragraph 2(f) of Section III, it seems that India can only extend assistance on the basis of a bilateral treaty or at least a bilateral arrangement. Is this also the case in relation to the freezing of funds? If so, could such arrangements be made ad hoc?

Ans. As far as freezing of funds of terrorist entities is concerned, India will be in a position to take action on a request of a foreign State on the basis of mutuality of assistance and where adequate proof is furnished that such

* The annexes are on file with the Secretariat and are available for consultation.

freezing is required given the nature of an offence or an intended terrorist offence. We do not have any *ad hoc* arrangements to deal with matters relating to freezing of funds as such cases could be subject to challenge in the courts of law in India.

Que. 1.5 Effective implementation of paragraph 1 of the Resolution also requires the existence of legal provisions or administrative measures that ensure that funds and other economic resources collected by non-profit organizations (e.g. religious, charitable or cultural organizations) are not diverted for other than the stated purposes, particularly for financing of terrorism. Please elaborate on how India (proposes to) ensures this, in particular regarding contributions received by non-profit organizations in India, from domestic sources and in Indian currency. Please clarify whether and how the Indian Income Tax Act and the Societies Registration Act, are applicable in that regard.

Ans. For monitoring the collection and use of funds and other economic resources by non-profit organisations (for example, religious, charitable, cultural and other non-profit organisations) and for ensuring that these are not diverted for use other than the stated purposes, India had enacted as far back as 1860 the Societies Registration Act. Several states of the Union of India have, since, enacted their own Societies Registration Acts to replace the 1860 Act that contain detailed provisions relating to the registration, maintenance of accounts, collection and use of resources, audit of accounts, etc. These Acts also provide for the establishment of a separate agency for administering the law.

The above-mentioned legislation imposes certain mandatory obligations on non-profit organizations such as the filing of annual reports, intimation of change in membership and change of location, and filing of audit reports. The funds of the relevant association or society may be utilised only for the objects set forth in the Memorandum of Association. Furthermore, the funds of the society cannot be shared among members. If these requirements are not fulfilled, registration of the society is liable to be cancelled or the name of the society liable to be removed from the Register of Societies. If a registered society is determined to be not functioning according to the provisions of the Act, the Government have the right to dissolve the entity and to appoint a special officer to administer the society.

Under the Prevention of Terrorism Act 2002 (POTA), terrorist acts include acts of fund-raising by persons or organisations if such funds are intended for the purposes of terrorism. When a non-profit organisation is found diverting funds for purposes of terrorism, that organisation's name may be removed from the Register of Societies and the organisation itself may be prosecuted under POTA and its properties and assets seized under that Act.

In addition, the Foreign Contribution (Regulation) Act, 1976 (FCRA) enables the competent authorities in the Government of India to monitor closely the receipt of foreign resources by organisations in India and their use. The Government of India and the state governments maintain data- bases in respect of these organisations. In discharging their responsibilities, close and continuous interaction exists between the concerned authorities of the Government of India and state governments, including intelligence agencies and the police, to track and monitor any suspicious charitable organisations which might *inter alia* divert funds, etc. for terrorist purposes. Such information is then processed by the police in cooperation with other agencies where such suspicions are confirmed.

The Income-Tax Act prohibits the expenditure of funds by non-profit organisations for objects other than those set forth in the memorandum of association; their funds may be invested only in scheduled banks, public deposits, bonds and government securities. Auditors of such organisations are required to certify the nature of the grant as well as donations and that the grants and donations are spent for the purpose for which they were received. The Income-Tax structure of the country includes a separate Directorate General that deals with institutions that are given exemptions from income tax (religious, charitable, cultural and other non profit organisations). Such organisations are required to file regular statements with the authorities concerned. The field-level officers of the Directorate General monitor the accounts of these organisations. Therefore, an appropriate legislative framework exists, as well as adequate enforcement mechanisms, at the level of both in the

Government of India and the state governments, to monitor and check the collection and use of funds and other economic resources by non-profit organisations. [Annexures - The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 and, COFEPOSA Act, 1974].

Que. 1.6 Does a national-level body have responsibility for freezing funds and other financial assets or economic resources of persons and entities described in sub-paragraph 1(c) of the Resolution?

Ans. General provisions concerning assistance in relation to orders of attachment or forfeiture of property are dealt with under section 105C of the Criminal Procedure Code (Cr.P.C.), 1973. Under section 105C(3) where a letter of request is received by the Government of India from a court or authority in a contracting State requesting attachment or forfeiture of property in India, derived or obtained, directly or indirectly, by any person from the commission of an offence committed in that contracting State, the Government may forward such letter of request to the Court, as it thinks fit, for execution in accordance with the provisions of sections 105D to 105J (both inclusive) or, as the case may be, with any other law in force. A copy of Section 105C is enclosed for ready reference. In addition, with respect to terrorist offences, property may also be forfeited under the provisions of the Prevention of Terrorism Act, 2002 (POTA).

Que. 1.7 What legislation or procedures exist for denying safe haven to terrorists, such as laws for excluding or expelling the types of individuals referred to in sub-paragraph 2(c) of the Resolution? It would be helpful if India supplied examples of any relevant action taken.

Ans. As far as the legislation and procedures of denial of entry to terrorists is concerned, section 3, sub section (4) of the Prevention of Terrorism Act, 2002 (POTA) provides for punishment for anybody who voluntarily harbours or conceals any person while knowing that such person is a terrorist.

The system of immigration control instituted and implemented by the Government of India is very stringent and utilises the necessary data-bases to check for terrorists/criminals. In addition, immigration authorities, customs authorities and intelligence agencies are fully equipped to ensure that no undesirable individuals/persons can enter India or seek safe haven in the country. We have extensive border controls on our land borders as well as a very strong coast guard agency to patrol the extensive Indian coast-line.

The relevant pieces of legislation - the Foreigners Act 1946; Foreigners Orders issued by the Ministry of Home Affairs from time to time,: and the Passport Act 1967 provide the appropriate and sufficient legal framework to implement sub-paragraph 2(c) of Resolution 1373. According to the Foreigners Act 1946 a person who is not a citizen of India is a foreigner and is governed by provisions of the Foreigners Act. Under the provisions of this Act, the Government of India have the power to issue orders either generally or with respect to all foreigners or any prescribed class or description of foreigners. Such orders may prohibit, regulate or restrict the entry of foreigners into India, departure therefrom or presence or continued presence therein. Under Section 7, the Act imposes an obligation on hotelkeepers and others to furnish information in respect of foreigners accommodated in such places. The Foreigners [Report to Police] Order of 1971 obligates every householder or other person to report to the nearest police station the arrival or presence in his/her premises of a foreigner. Any person contravening the provisions of the Foreigners Act is liable for punishment with imprisonment for a term which may extend to five years.

From the above, it will be clear that there are adequate laws, procedures and enforcement agencies in India to prevent terrorists from seeking safe haven in the country.

Que. 1.8 Section 3 of the Prevention of Terrorism Act, 2002, criminalizes terrorist acts perpetrated against Indian interests, mostly in India itself. Effective implementation of sub-paragraphs 2(d) and (e) of the Resolution requires that the use of Indian territory for the purpose of financing, planning, facilitating or committing terrorist acts against other States and their citizens be criminalized. Please outline the provisions which India proposes to introduce into its domestic legislation in order to comply with this requirement.

Ans. As far as the implementation of sub-paragraphs (2) and (3) of Resolution 1373 is concerned, the Indian Penal Code (IPC) (45 of 1860) contains adequate provisions to deal with persons, who plan, organise or take any other action anywhere that could constitute an offence. Copies of the relevant extracts of IPC sections 2, 3, 4, 121, 121A, 122 and 123 are enclosed. In addition, under section 3(1) and 3 (3) of POTA, the definition of terrorist acts includes acts calculated "to strike terror in any section of the people". (The term 'people' is widely interpreted to mean people anywhere. That the Al-Qaeda, which has not yet been found to be operating in India, has been banned in India under POTA is indicative of this). In addition, the Arms Act, 1959; the Explosives Act, 1884 and the Explosive Substances Act, 1908 contain very stringent punishments in regard to such acts.

The Security Council Act, 1947 empowers the Government of India to implement the decisions of the United Nations Security Council adopted under Chapter VII of the UN Charter. Furthermore, a proposal to notify an order in respect of Resolution 1373 under the Act is at an advanced stage of consideration of the authorities. Similarly, a proposal to give effect to the provisions of the International Convention for the Suppression of the Financing of Terrorism, 1999 either under the existing laws or, if necessary, by way of an enabling legislation is currently under consideration. Once these exercises are completed, the obligations contained in sub-paragraphs 2(d) and 2(e) of Resolution 1373 would be implemented.

It would thus be clear that, at present, we have adequate laws and enforcement machinery for purposes of taking action against persons who finance, plan, facilitate or commit terrorist act against other States and their citizens.

Que. 1.9 Is the existence of a bilateral agreement or arrangement a pre-requisite for India before it can offer legal assistance or extradite criminals to other countries?

Ans. Yes, the existence of a bilateral agreement or arrangement is a pre-requisite before India can extradite a criminal to another country. As far as the offer of legal assistance is concerned, under section 166B of the Criminal Procedure Code (Cr.PC), 1973 (copy enclosed), upon receipt of a letter of request from a court or an authority of another country for examination of any person, etc., the Government of India would forward it to the relevant court to proceed appropriately. In addition, India has a number of mutual legal assistance agreements/treaties with other countries. India continues to be willing to enter into such agreements with other countries.

Que. 1.10 Effective implementation of sub-paragraph 2(e) of the Resolution requires that States ensure that persons who participate in the financing, planning, preparation or preparation of terrorist acts or support such acts are brought to justice either by submitting the case without undue delay to their respective competent authorities for the purpose of prosecution or by extraditing these persons. In that context, please clarify whether, according to Section 34 of the Extradition Act, a person can be prosecuted in India if he or she has committed an offence abroad to which no bilateral extradition treaty is applicable or if India decides not to extradite this person.

Ans. Section 34 of the Extradition Act 1962 provides that an extradition offence committed by any person in a foreign state shall be deemed to have been committed in India and such persons shall be liable to be prosecuted in India for such an offence. Extradition offences have been defined under section 2 to mean:-

(i) in relation to a foreign state being a treaty state, an offence provided for in the extradition treaty with that state:

(ii) in relation to a foreign state other than a treaty state an offence punishable with imprisonment for a term, which shall not be less than one year under the laws of India or of a foreign state and includes a composite offence. By composite offence is meant "an act or conduct of a person which occurred, whole or in part in a foreign state or in India but its effect or extended effects, taken as a whole would constitute an extradition offence in India or in a foreign state as the case may be."

Under section 34 of the Extradition Act, a person can be prosecuted in India if India decides not to extradite such a person. In the absence of a bilateral treaty, an arrangement can be worked out or, if applicable, an international Convention containing a provision for the obligation to extradite or prosecute can be invoked.

Que. 1.11 According to the supplementary report, even in cases where there are no extradition treaty concluded by India with another country, the Central Government may, by notified order, treat any convention, to which India and the foreign state are parties, as an extradition treaty concluded by both states and providing for extradition in respect of the offences specified in the relevant international conventions and protocols against terrorism. Has the Central Government ordered to treat these conventions and protocols between India and all respective parties to the international legal instruments as such extradition treaties?

Ans. Steps are being taken to notify all anti-terrorism Conventions under sector 3 of the Extradition Act so that in the absence of a bilateral Extradition Treaty or arrangement, such Conventions/Protocols may be treated as a basis for extradition between India and a Party to such Convention/Protocol.

The attention of the Committee is drawn to a recent instance of such an order. A notification has been issued in regard to Portugal. A copy of the text of the notification is enclosed.

Que. 1.12 Sub-paragraph 3(d) of the Resolution requires all States to become parties as soon as possible to all the relevant international conventions and protocols relating to terrorism. The CTC would appreciate receiving information on the progress made regarding the ratification by India of the International Convention for the Suppression of the Financing of Terrorism.

Ans. The Government of India has decided very recently to ratify the International Convention for Suppression of the Financing of Terrorism.

Que. 1.13 Please explain how you have implemented the Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, the Convention on the Marking of Plastic Explosives for the Purpose of Detection and Convention on the Physical Protection of Nuclear Material into your domestic legislation.

Ans. Implementing legislation for the Protocol on the Suppression of Unlawful Acts of Violence at Airports serving International Civil Aviation supplementary for the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation is reflected in The Suppression of Unlawful Acts against the Safety of Civil Aviation (Amendment Act), 1994. Legislation to implement the Convention of Marking of Plastic Explosives is under process.